

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

UNITED STATES DISTRICT COURT

for the

Western District of New York

RODERICK C. ARRINGTON

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
ANDREW C. LOTEMPIO, et al.,
Bethany J. Lipman
Jeremiah Lenihan
"See Attached"

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No. _____

(to be filled in by the Clerk's Office)

JURY TRIAL: Yes ☒ No ☐

AMENDED COMPLAINT

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name RODERICK C. ARRINGTON
 All other names by which
 you have been known: A.K.A Rah-Rah
 ID Number 12 6031A
 Current Institution Niagara County Correction Facility
 Address P.O. BOX 496
Lockport NY 14095
City State Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name BETHANY J. LIPMAN
 Job or Title (*if known*) UNITED STATES ATTORNEY U.S. DOJ
 Shield Number _____
 Employer _____
 Address 1301 New York Avenue, NW, Suite 700
Washington D.C. 20005
City State Zip Code
☒ Individual capacity ☐ Official capacity

Defendant No. 2

Name JEREMIAH LENTHAN
 Job or Title (*if known*) UNITED STATES ATTORNEY
 Shield Number _____
 Employer _____
 Address 138 Delaware Avenue
Buffalo N.Y. 14202
City State Zip Code
☒ Individual capacity ☐ Official capacity

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

Defendant No. 3

Name

Job or Title (if known)

Shield Number

Employer

Address

ERIC KELLER
Captain at Cattaraugus County Jail301 Court Street
Little Valley N.Y. 14755
City State Zip Code☒ Individual capacity ☐ Official capacity

Defendant No. 4

Name

Job or Title (if known)

Shield Number

Employer

Address

ANDREW C. LOTEMPIO, ESQ
Trial AttorneyBuffalo N.Y. 14202
City State Zip Code☒ Individual capacity ☐ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☒ Federal officials (a *Bivens* claim)☐ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?Fourth, Fifth, Sixth, Fourteenth Amendments,
42 U.S.C. Section 1985(2) and (3),

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

This Bivens suit involving civil rights violations from City and State officials, FBI agents, AUSA's, that involves conspiracy under 42 U.S.C. Section 1985 (2) and (3) "see Attached additional pages"

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☒ Pretrial detainee *pro se*
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☐ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☒ Other (explain) *I am a pro se litigant in my current case.*

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.
The claim happen on September 13, 2017, At the U.S. District courthouse for the Western district of Buffalo N.Y. The morning of Jury Selection. "see Attachments"
- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.
The claim happen on December 22, 2021, At Cattaraugus County Jail, while Proceeding pro se as a pretrial detainee. "see Attachments"

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

C. What date and approximate time did the events giving rise to your claim(s) occur?

ON December 22, 2021, and on January 4, 2022. "see Attachment additional pages."
ON September 13, 2017, on November 19, 2019.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what?

Was anyone else involved? Who else saw what happened?)

Illegal search and seizure by FBI agents, sent by AUSA's for investigatory search ordered by the prosecutors, No search warrant, and the Jail Captain Keller, stated that the FBI agents had a search warrant for my cell. This was planned by Standby Counsel and the AUSA's on a conference call for 15 mins with FBI agents. This conspiracy was planned on a 15 min phone call without the prose litigant. And the Jail Captain allowed the FBI agents in my cell without presenting the search warrant. The protective order was not presented until after the illegal search was conducted. The Jail captain stated that the FBI agents had a search warrant for my cell. On this 15 minute conference call all above conspired, a plan to get me out my cell. "see attachments additional pages marked"

V. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

The claim section B, C, D, Attachments, involves mental health problems, along with pain and suffering, and lost of liberty. The impede of my rights to a fair trial and the violation of the destruction of the privileged documents prejudiced the defendants rights to a fair trial. Due process and equal protection violations.

VI. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

I need the Judiciary to hold all above responsible for these serious violations. punitive damages for commissary and phone bills for 8 years, mental health issues, along with pain and suffering, lost of liberty, The impediment of my rights to a fair trial, and Due process, and equal protection and privileges. Relief sought is \$10,000,000, including lawyer retainer fees.

VII. Exhaustion of Administrative Remedies Administrative Procedures

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted."

Administrative remedies are also known as grievance procedures. Your case may be dismissed if you have not exhausted your administrative remedies.

- A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

☒ Yes

☐ No

If yes, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

Cattaraugus County Jail

- B. Does the jail, prison, or other correctional facility where your claim(s) arose have a grievance procedure?

☒ Yes

☐ No

☐ Do not know

- C. Does the grievance procedure at the jail, prison, or other correctional facility where your claim(s) arose cover some or all of your claims?

☐ Yes

☒ No

☐ Do not know

If yes, which claim(s)?

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

- D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose concerning the facts relating to this complaint?

☒ Yes

☐ No

If no, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

☐ Yes

☐ No

- E. If you did file a grievance:

1. Where did you file the grievance?

At Cattaraugus County Jail

2. What did you claim in your grievance?

The Captain of the Jail, stated, and lied about the FBI agents having a Search and Seizure warrant for my cell, and I was tricked out my cell and Standby Counsel, and everyone involved conspired and violated my rights as an pro se litigant, and I requested the return of all missing materials, and to retain all camera footage, and the protective order never stated this misconduct.

3. What was the result, if any?

The names of the FBI agents, and after 14 days later I finally had got a chance to have access to my personal property, and my trial materials was missing.

4. What steps, if any, did you take to appeal that decision? Is the grievance process completed? If not, explain why not. (Describe all efforts to appeal to the highest level of the grievance process.)

The grievance process is completed and I was denied all the way through and was also denied by the N.Y.S Commission of Correction, I have all copies from the first and second Grievances to the end.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but you did inform officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Exhibits that was sent with both Grievances.

" see attachments exhibits "

(Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.)

VIII. Previous Lawsuits

The "three strikes rule" bars a prisoner from bringing a civil action or an appeal in federal court without paying the filing fee if that prisoner has "on three or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

To the best of your knowledge, have you had a case dismissed based on this "three strikes rule"?

☐ Yes

☒ No

If yes, state which court dismissed your case, when this occurred, and attach a copy of the order if possible.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

☒ Yes

☐ No

- B. If your answer to A is yes, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)

1. Parties to the previous lawsuit

Plaintiff(s) RODERICK C. ARRINGTON

Defendant(s) ANDREW C. LOTEAPPIO, et al

2. Court (if federal court, name the district; if state court, name the county and State)

UNITED STATE DISTRICT COURT FOR THE WESTERN DISTRICT OF Buffalo, N. Y.

3. Docket or index number

Case No. 6:22-CV-06141-FPG, DKT. No. 1, pages 1 of 45

4. Name of Judge assigned to your case

Hon. Judge Frank P. Geraci, Jr

5. Approximate date of filing lawsuit

March 21, 2022

6. Is the case still pending?

☒ Yes

☐ No

If no, give the approximate date of disposition. _____

7. What was the result of the case? (For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)

An Amended Complaint.

(Rev. 01/21) Complaint for Violation of Civil Rights (Prisoner)

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: October 6, 2022.

Signature of Plaintiff

Printed Name of Plaintiff

Prison Identification #

Prison Address

Roderick Arrington under penalty of perjury.
Roderick Arrington
126031A
P.O. Box 496
Lockport NY 14095
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Address

Telephone Number

E-mail Address

City State Zip Code

#1. The Parties to this complaint, Section B. The Defendant(s)
The additional page 2 of 11. of Attachments.

Defendant No. 1. Andrew C. LoTempio, esq.

Defendant No. 2. Wei Xiang, AUSA.

Defendant No. 3. Bethany J. Lipman, AUSA.

Defendant No. 4. Jeremiah Lenihan, AUSA.

Defendant No. 5. Eric Keller, Jail Captain.

Defendant No. 6. Robert C. Singer, esq. (Individual Capacity)

Defendant No. 7. Jared Fitzgerald, FBI SA. (Individual Capacity)

Defendant No. 8. Robert Colunga, FBI SA. (Individual Capacity)

#2. Basis for Jurisdiction Attachments Section D. page 4 of 11. C. page 3 of 11.

This Bivens suit involves civil rights violations from city, and state officials, county officials, U.S. Attorney's, and FBI SA's, that involves conspiracies under statutes 42 U.S.C. Section 1985 (2) and (3). Mr. Arrington has no effective means other than the Judiciary to vindicate these rights under the "cause of action" the equal protection color of federal law, and under color of state or local law, has been violated, The fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution.

1. Trial Counsel Mr. Andrew C. LoTempio, and AUSA Wei Xiang committed Conspiracy acts together, when they acted as an investigative officer, and in the clear absence of all Jurisdiction, when they played Good Cop Bad cop the morning of Jury selection when trial Counsel for the plaintiff, helped, knowingly to coerce co-defendant, Marcel Worthy, into a last minute cooperation plea deal against his own client, which is a Fifth and Sixth, Fourteenth Amendment violation, that denied plaintiff a right to a fair trial, and Due process of law violation, and conspiracy acts together in concert to deprive the plaintiff of constitutional rights, and "an overt act" done to further the conspiracy, under 42 U.S.C. Section 1985 (2) and (3).

2. AUSA's Bethany J. Lipman, Jeremiah Lenihan, FBI SA's Jared Fitzgerald and Robert Colunga, and Standby

Counsel Robert Singer, Esq., and the jail Captain Eric Keller, committed conspiracy acts together in concert to deprive the plaintiff of constitutional rights, and "an overt act" done to further the conspiracy, under 42 U.S.C. Section 1985 (2) and (3), involving Civil right violations under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, violations under color of state or local law, and violations under color of federal law.

#4. Statement of Claim Attachments the 1st claim Section A. page 4 of 11. Section C. and Section D. Attachments page 5 of 11.

1. ON September 13, 2017, Mr. LoTempio and AUSA Wei Xiang committed Conspiracy acts together, when they acted as an investigative officers, and in the clear absence of all Jurisdiction when they played Good cop, Bad cop, tactics, when Mr. LoTempio stepped out of his duties to his client, when he helped, and knowingly coerced and flipped Marcel Worthy against his own client, with the help of AUSA Wei Xiang, which denied Mr. Arrington a right to a fair trial, and the right to Due process. Mr. LoTempio trial performance was in favor of the Government, which his performance was the reason for the trial disadvantages that hurt Mr. Arrington's trial and lost the chance to call Aaron Hicks as a witness for the defense. ② Mr. LoTempio purposely did not ask or acted as the trial Counsel, or did he tell me of the disadvantages I would lose if I waived the conflict of interest. Mr. LoTempio was ineffective throughout the trial and the case, which also denied Due process rights of the plaintiff. ③ Also see Second Circuit Court of Appeals decision and order, Case No. 17-4092-CR U.S. v. Arrington, Document 140-1, 2682724, page 1 of 40.

④ The overt act committed to further the agreement was to flip Mr. Worthy, and to help the government, win the trial.

#4. Statement of Claim Attachments, Section B. page 4 of 11.
Section C. and Section D. Attachments page 5 of 11.

- ① ("This was not a Jail shake down") "For Security reasons".
This involved a Warrantless search for evidence in current case, and other cases the plaintiff ~~is~~ being investigated for by SA FBI Robert Colunga who executed the illegal investigatory search. ② The FBI SA Robert Colunga is investigating the plaintiff for uncharged crimes, that I am innocent for. The FBI SA Robert Colunga is the lead SA, that was investigating plaintiff for the cold case homicide victim Michael Payne AKA Juice. ③ FBI SA Robert Colunga is the lead SA that prepared the Warrant Affidavit for the Application for the probable cause for the plaintiff's DNA buccal samples to be tested and compared for evidence collected at the crime scene under Fed. R. Crim. P. 41(c) evidence of a crime. ④ So once Hon. Judge Roemer signed the Search Warrant for the seizure of the plaintiff's DNA Buccal Samples on April 8, 2020, at 1:03 pm, Case No. 20-M-5061. ⑤ FBI SA Colunga planted plaintiff DNA Buccal samples on a firearm that was not a part of the evidence covered in the Warrant Application, and planted the DNA Buccal samples on the acquitted conduct. plaintiff was acquitted on from his first trial. ⑥ This DNA report was filed on the record as new evidence, by AUSA's Lipman and Lenihan. After this Due process violation and Fourth Amendment violation, The AUSA's sent these same investigative FBI SA, to the jail.

⑦ Once at the Jail, Before entering the Jail. FBI SA Colunga and Fitzgerald, standby Counsel Robert Singer, and AUSAs, was on a 15 minute conference call, committing conspiracy acts together in concert to deprive the plaintiff of his constitutional rights, and "an overt act" was done to further their conspiracy. under 42^⑧. The plan was brokered by standby Counsel, and when the FBI SA's entered the Jail, with the Help of Captain Eric Keller, tricked me out my jail cell by stating that the FBI SA's, had a Search and Seizure Warrant for my cell. Denied me to be present during this search,^⑨ Sgt. Phillips witness Captain Keller state to me that he had a search Warrant for my cell. Officer Rosing also witness me ask Captain Keller to see this warrant, the Captain told me the FBI SA's had for my Jail cell.^⑩ Officer Rosing also witness Captain deny me to be present for this illegal search and to have access to the seized materials. Standby Counsel Robert Singer also witnessed me, while on a legal call heard me ask captain Keller to see this warrant he stated that the FBI SA's had to have access to my personal property, and trial materials.^⑪ The overt acts committed in furtherance of the conspiracy is the destruction of the privileged documents prejudiced the **plaintiff** rights to a fair trial, and violated attorney/client privilege, also violated plaintiff's fourth and Fifth, Sixth, fourteenth Amendments, with no probable cause for the illegal search, and denied plaintiff due process, and his right were violated ~~ed~~ to act as AN pro se litigant under the Sixth Amendment, and equal

protections under the fourteenth Amendment, under due process.⁽¹²⁾ Not only did FBI SA Colunga, take evidence from another case, and illegally brought them over into this case as new evidence.⁽¹³⁾ He had an investigative motive, to find evidence in other investigations, and to destroy evidence in plaintiff criminal case, in which, He succeeded when the plaintiff trial materials was destroyed in this illegal search and seizure.⁽¹⁴⁾ Captain Keller is the Jail Captain, who stated that the FBI SA's had the Search Warrant, Knowing they had the protective order the whole time, and he never presented the order until after the illegal search and seizure was committed. Know if he gave the protective order, I would have requested them to follow the order which ordered plaintiff to hand over/or surrender the protected materials.⁽¹⁵⁾ I was denied these rights, and officer Blue witnessed me on numerous occasions trying to hand over the protected materials since Hon. Judge Arcara, granted the order on November 18, 2021.⁽¹⁶⁾ Captain Keller denied me to have access to the protected materials for over 14 days, which denied me access to the Courts.⁽¹⁷⁾ Standby Counsel broke his contract when He went against my consent and brokered this plan. All above had an agreement that morning and it was to violate my rights as an pro se litigant, who was protected under the U.S. Constitution. Which resulted in the destruction of protected trial materials for the trial defense.⁽¹⁸⁾ This malicious prosecution, vindictive prosecution, have violated plaintiff's due process, and this illegally search and seizure was ordered by the AUSA's

for investigative reasons to see what all plaintiff had for his defense for trial and the evidence I had to prove the prosecutorial Misconduct that's been committed in this case. Those evidence was destroyed during this illegal search and Seizure, that was not covered in the protective order.⁽¹⁹⁾ The Jail Captain stated that they had A Search Warrant for the plaintiff's Jail cell. The protective order never ordered that plaintiff could not have access to the materials, or did it order that plaintiff had to hand over/or surrender his personal mail, or personal property, or plaintiff trial materials.⁽²⁰⁾ This Misconduct was not covered in the protective order. This was an illegal search and seizure that violated all plaintiff's Constitutional rights.⁽²¹⁾ This was also witnessed by the following: witness #1 Daniel P. Klein, witness #2 Chris Marcinkowski, witness #3 Mark Brunk witness #4 Jarrod Adams, all (4) four witnesses was present for the illegal Search and Seizure. They are inmates that was locked in their cells while this took place. Their cells were not searched either, this was a targeted, investigatory search.

ERIE COUNTY CENTRAL POLICE SERVICES FORENSIC LABORATORY45 Elm Street Buffalo, NY 14203-2600
Phone: (716) 858-7408 Fax: (716) 858-7426**DNA ANALYSIS REPORT****LAB NUMBER: 14-07483****INVESTIGATING AGENCY:** Federal Bureau of Investigation**CONTACT INFO:** 1 FBI Plaza Buffalo, NY 14202**CASE NO.:** 245D-BF-3068082**CASE NAMES:** Arrington, Roderick - Defendant**DATE OF REPORT:** 05/12/2020**REFERENCE NO.:****INV. OFFICER:** Paris**Report Number 4**

Date of receipt of test item(s): 11/05/2014, 04/23/2020

Date(s) of performance of laboratory activity: 04/29/2020 to 05/12/2020

This date matches the Search and Seizure
Warrant for the Warrant Application.
Case no. 20-M-5061

DNA was extracted from the item(s) described below. It was amplified using the polymerase chain reaction (PCR) and typed using capillary electrophoresis at the following genetic loci: Amelogenin, D3S1358, D1S1656, D2S441, D10S1248, D13S317, Penta E, D16S539, D18S51, D2S1338, CSF1PO, Penta D, TH01, vWA, D21S11, D7S820, D5S818, TPOX, DYS391, D8S1179, D12S391, D19S433, FGA and D22S1045. The results of this analysis and those previously reported in this case are described below.

Results/Opinions/Interpretations:

Based on the PCR results, the DNA profile obtained from the swab of the semi-automatic pistol (Item 1B194.1) is a mixture of DNA from four individuals, including at least one male individual and one female individual. The major DNA profile is that of an unknown female individual and was entered and searched in CODIS Local (Local DNA Databank) where regular searches will be performed. No matching DNA profiles were found at this time. Notification will be issued if there is a hit in the database to a matching DNA profile or if the DNA profile is removed from CODIS at any time in the future. The DNA profile does not qualify for submission to the State and National DNA Databanks because it does not meet the CODIS eligibility requirements for these databanks.

The DNA profile of Roderick Arrington (Item 1) cannot be excluded from the minor portion of the DNA in the mixture. The DNA results for the swab of the semi-automatic pistol (Item 1B194.1) are at least 1.42×10^{12} (1.42 Trillion) times more likely if they originated from Roderick Arrington and three unknown individuals rather than if they originated from four unknown individuals in the U.S. population. This analysis provides very strong scientific support for the proposition that Roderick Arrington is a contributor to the DNA profile obtained from Item 1B194.1.

The DNA profile obtained from the known buccal sample from Roderick Arrington (Item 1) was entered into CODIS Local (Local DNA Databank) where regular searches will be performed. No matching DNA profiles were found at this time. Notification will be issued if there is a hit in the database to a matching DNA profile or if the DNA profile is removed from CODIS at any time in the future.

Additional known buccal specimens are required for further comparison, including any elimination samples, if applicable.

Item 1 will be returned to the submitting agency. The DNA extracts will remain in laboratory custody.

The autosomal STR statistical calculations in this report were generated using STRmix software which calculates a fully continuous probabilistic likelihood ratio (LR). The most conservative LR was reported using the lower bound 99% credible interval from individuals in the U.S. Caucasian, African American, and Hispanic population groups. The population allele frequencies were obtained from the NIST 1036 US Population Dataset.

falsified
DocumentThere's No Warrant
Application for this
New DNA Report.

Exhibit #6

Now
four

UNITED STATES DISTRICT COURT

for the

Western District of New York

In the Matter of the Search of
 (Briefly describe the property to be searched
 or identify the person by name and address)

RODERICK ARRINGTON, located in the Cattaraugus
 County Jail

Case No. 20-M-5061

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
 of the following person or property located in the Western District of New York
 (identify the person or describe the property to be searched and give its location)

The person of RODERICK ARRINGTON, currently located in the Cattaraugus County Jail.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property
 described above, and that such search will reveal (identify the person or describe the property to be seized):

DNA buccal samples from RODERICK ARRINGTON, containing DNA

YOU ARE COMMANDED to execute this warrant on or before April 22, 2020 (not to exceed 14 days)
☒ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the
 person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the
 property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory
 as required by law and promptly return this warrant and inventory to United States Magistrate Judge Michael J. Roemer
 (United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C.
 § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose
 property, will be searched or seized (check the appropriate box)

☐ for days (not to exceed 30) ☐ until, the facts justifying, the later specific date of

Date and time issued: April 8, 20201:03 pmCity and state: Buffalo, New York

Michael J. Roemer
 Judge's signature

Honorable Michael J. Roemer, U.S. Magistrate Judge

Printed name and title

Exhibit #6

This is
 connected
 To the Warrant
 Application for
 the investigation for
 M. Payne A.K.A Juice

Not

FOR the
 Acquitted
 Counts

Probable
Cause affidavit

or
explain what
this pertains with
in relation of a crime

Erie County Central Police Services Forensic Laboratory
45 Elm St.
Buffalo, New York 14203-9600
(716) 858-7409

#6 Exhibits



REQUEST FOR LABORATORY EXAMINATION

SUBMITTING AGENCY:	DISTRICT/BUREAU:	CASE/CD NUMBER:
FBI Sole Street		Buffalo
INVESTIGATING OFFICER:	BUSINESS PHONE:	E-MAIL ADDRESS:
SA Rob Colunga	716-715-4244	RColunga@fbi.gov
CHARGES:	DATE/TIME OF OCCURRENCE:	PROSECUTOR:
		AUSA Tripi

CHECK IF APPLICABLE: ☐ Sale of controlled substance ☐ Asset Forfeiture Case ☐ Evidence Previously Submitted in this case

DEFENDANT(S): (last name, first name)	Date of Birth:	VICTIM(S): last name, first name	Date of Birth:
Accington, Robert	12/81		

CPS Item #:	Agency Item #:	DESCRIPTION OF EVIDENCE:	EXAMINE FOR:	ADDRESS & WHERE OBTAINED:
1		11/45 DNA Buccal Swab	Compare other/DNA - Seal to Tripi	

COMMENTS:

DO NOT WRITE IN
THE SHADED AREAS

THIS SIDE TO BE COMPLETED BY THE SUBMITTING OFFICER

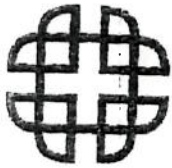
SUBMITTED BY: [Signature]PRINT NAME: Rob ColungaLOCKER NO.: 36DATE/TIME SUBMITTED: 04/28/2020 1100

By signing this form you acknowledge that the Laboratory will select the appropriate items to be analyzed and the methods of analysis.

Go to www.erie.gov/forensiclab for Laboratory information, guidelines and forms.

THIS SIDE FOR LABORATORY USE ONLY

RECEIVED: ☒ Sealed KIT☐ Unsealed ☐ Not Inventoried☐ Improper Seal ☐ Received with cross outs/write oversDATE/TIME REC'D: 4-23-2020 0739RECEIVED BY: Don GizeLAB NO.: 14-07483 0SUBMISSION #: 2 PAGE #: 1 OF 1RESUBMISSION ☐



SINGER LEGAL PLLC

Compelling, Passionate Advocacy

Exhibit # 1

ROBERT C. SINGER, ESQ.
rob@singerlegalpllc.com

September 28, 2021

Hon. Richard J. Arcara
United States District Court for the
Western District of New York
2 Niagara Square
Buffalo, NY 14202

Your Honor:

Re: Standby Counsel Assignment
USA v. Arrington et al., 15-CR-33-3-RIA (W.D.N.Y.)

I spoke to Mr. Spitler about this matter and reviewed the documents your staff provided to me. I also reviewed my conflicts list and I do not believe there is any conflict to my assignment as standby counsel in this matter. That said, in speaking with Mr. Spitler and Mr. LaTona, I want to ensure (to the extent possible) that my role as standby counsel does not conflict with Mr. Arrington's desire to represent himself. To that end, I have performed some research regarding standby counsel. I believe it is appropriate for you to enact restrictions to my representation and to clearly define my role in this case for the benefit of Mr. Arrington, the government, myself, and the Court.

General points of law

The Sixth Amendment guarantees not only the right to be represented by counsel, but also the right to self-representation. *See Faretta v. California*, 422 U.S. 806, 819 (1975). When a defendant knowingly, intelligently, and voluntarily decides to forego his Sixth Amendment right to counsel, "[t]he *pro se* defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial." *McKaskle v. Wiggins*, 465 U.S. 165, 174 (1984). As such, standby counsel's role generally is restrained to some degree for two main reasons. "First, the *pro se* defendant is entitled to preserve actual control over the case he chooses to present to the jury. . . . If standby counsel's participation over the defendant's objection effectively allows counsel to make or substantially interfere with any significant tactical decisions, or to control the questioning of witnesses, or to speak *instead* of the defendant on any matter of importance, the *Faretta* right is eroded." *See McKaskle*, 465 U.S. at 178. "Second, participation by standby counsel without the defendant's consent should not be allowed to destroy the jury's perception that the defendant is representing himself." *See id.*

While the district court has does have discretion to appoint standby counsel, *see McKaskle*, 465 U.S. at 176, a *pro se* defendant does not have a constitutional right to the assistance of standby counsel, *see Faretta*, 422 U.S. at 835; *United States v. Lawrence*, 161 F.3d 250, 253 (4th Cir. 1998). To this end, the district court has "broad discretion" to enact reasonable restrictions governing "what, if any, assistance

80 East Spring Street

Williamsville, New York 14221

Tel: 716.222.3288

www.singerlegalpllc.com

#4. Statement of Claim Attachments the 2nd Claim Section B.page
4 of 11. Section C. and Section D. Attachments page 5 of 11.

On January 3, 2022, standby counsel Mr. Singer called the c-pod unit to speak to Mr. Arrington, when this call took place, standby counsel Mr. Singer stated that he would be to the jail the following day so we can go through my property (14) days later from the day it was illegally seized. I specifically told Mr. Singer do not come up here acting as my lawyer, and that we had a contract agreement that he have to abide by. The next day, on January 4, 2022, Captain Keller came to C-pod to inform me that someone was here in a unsecure location in his jail going through my personal property, and all my legal things. I asked captain keller respectfully to be present while this person is acting as co-counsel, captain keller denied me to be present, so i told captain keller to stop this individual acting as my attorney, unless Mr. keller put this person in a secure location in the jail so i can be there to sort through my things, I was "Again" denied to be present so i asked captain keller to stop and i have witnesses, that witness this on this day, and when the "FBI agents" seized all my things on December 22, 2021. Captain keller denied me on both occasion when both illegal searches took place. I have filed Administrative Remedies on December 29, 2021, and I filed another inmate grievance form on January 5, 2022, also i have filed a report with the Bar Association of Erie County against Mr. Singer on January 4, 2022, for his breach of his contract when he went against my consent on January 4, 2022, when he denied me to be present while he went through my personal property, when i demanded for him to stop if i was not present. also when he conspired against me on December 22, 2021, when all above seized my personal property without the proper authorization from the court.

SINGER LEGAL PLLC

Exhibit #
1

September 28, 2021
Page 2

standby, or advisory, counsel may provide to a defendant conducting his own defense.” *Id.*; see also *McKee v. Harris*, 649 F.2d 927, 931 (2d Cir. 1981) (noting how further, limitations may be placed on a pro se defendant’s ability to invoke the right to counsel “lest the right be manipulated so as to obstruct the orderly procedure in the courts or to interfere with the fair administration of justice”), *cert. denied*, 456 U.S. 917 (1982). This is so because as the Supreme Court noted in *McKaskle*, “a defendant does not have a constitutional right to choreograph special appearances by counsel” and “*Faretta* does not require a trial judge to permit ‘hybrid representation.’” *McKaskle*, 465 U.S. at 183; see also *Schmidt v. United States*, 105 F.3d 82, 90 (2d Cir. 1997).

When standby counsel is appointed, the Second Circuit has defined the role of standby counsel as follows:

to ‘aid the accused if and when the accused requests help, and to be available to represent the accused in the event that termination of the defendant’s self-representation is necessary,’ *Faretta*, 422 U.S. at 834 n.46, or ‘to relieve the judge of the need to explain and enforce basic rules of courtroom protocol or to assist the defendant in overcoming routine obstacles that stand in the way of the defendant’s achievement of [her] own clearly indicated goals.’ *Wiggins*, 465 U.S. at 184.

See *Clark v. Perez*, 510 F.3d 382, 395 (2d Cir. 2008). The relevant ABA standard governing standby counsel’s conduct provides:

Defense counsel whose duty it is to assist a pro se accused only when the accused requests assistance may bring to the attention of the accused matters beneficial to him or her, but should not actively participate in the conduct of the defense unless requested by the accused or insofar as directed to do so by the court.

ABA Defense Function Standards 4-3.9(2) (3d ed. 1993). Finally, in *United States v. Roof*, No. 15-CR-472-RMG (D. S.C. 2016), a well-known case involving another defendant who chose to proceed pro se, the district judge aptly stated as follows when discussing the role of standby counsel in his case, the court’s ability to set limitations on standby counsel, and how it is sound practice to inform all parties regarding the nature of those limitations early:

The Court has found much wisdom in the following statement of the West Virginia Supreme Court regarding the need of the trial court to set forth specifically the parameters of the role of standby counsel:

“Trial courts can easily remedy the confusion surrounding the differing roles apparently filled by standby counsel by exercising their supervisory powers to specifically define or restrict the duties of standby counsel whenever such counsel is appointed. See *Lawrence*, 161 F.3d at 253 (“[T]he

SINGER LEGAL PLLC

Exhibit #1

September 28, 2021
Page 3

district court, in keeping with its broad supervisory powers, has equally broad discretion to guide what, if any, assistance standby, or advisory, counsel may provide to a defendant conducting his own defense." (citation omitted)). Given the lack of clarity over what, exactly, is the role of standby counsel, we find it is of the utmost importance that, when appointing standby counsel, trial courts do in fact define, precisely, the role counsel is expected to assume. Furthermore, trial courts should clearly inform counsel and the defendant of that role. *West Virginia v. Powers*, 563 S.E.2d 781, 788 (W.Va. 2001)."

See *United States v. Roof*, No 15-CR-472-RMG (D. S.C. 2016) at ECF 741, *aff'd*, No. 17-3 (4th Cir. Aug. 25, 2021).

Proposed limitations regarding my role as standby counsel

In this case, I offer the following to help the Court and the parties craft what, if any, role I play in the proceedings.

First, I do not believe that I should serve as hybrid counsel. It appears that Mr. Arrington desires to represent himself in this case and make all strategic decisions. Since that is the case and his right, I do not believe that using me in a hybrid role is desirable since it risks interfering with Mr. Arrington's desires and injects needless appellate issues into the record and presents troublesome ethical questions for me to resolve. In talking with relieved counsel, such interference, no matter how well-intentioned, has caused issues in the past.

Second, if I am not appointed to serve in a hybrid role, then I believe the Court can limit my involvement to the following activities:

- Pretrial
 - Electronically filing Mr. Arrington's hand-written motions in CM/ECF so they are served on the court and counsel in the appropriate way, but not to type, proofread, spell-check, cite check, or format his motions and exhibits;
 - Meeting with Mr. Arrington to discuss what his trial defenses and theory of the case will be so I can understand them, but not to provide legal advice or counsel regarding the strength or weakness of those defenses or theories;
 - Providing procedural advice regarding the manner in which to present evidence to assist Mr. Arrington with his attempts to conform with the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and the Local Rules of the WDNY;
 - Electronically organize trial exhibits to aid with presentation;
 - Pretrial duties *do not* include performing legal research at the direction of the defendant, preparing voir dire questions or researching the venire, preparing proposed jury instructions, preparing witness/exhibit lists, and drafting motions and/or responses to government motions on behalf of the defendant.

SINGER LEGAL PLLC

Exhibit # 1

September 28, 2021

Page 4

- Trial
 - Sitting at counsel table with the defendant;
 - Providing recommendations on peremptory/cause challenges during voir dire and whether to exercise any *Batson* challenge, but not to conduct voir dire or argue challenges or *Batson* matters;
 - Consult with the defendant before and after court proceedings and during breaks in court proceedings;
 - Providing "elbow advice" directly to defendant during court proceedings *so long as the advice is first solicited by the defendant*;
 - Serving as an intermediary between government counsel and defendant;
 - Facilitating the defendant's receipt of filings and other communications delivered to counsel;
 - Ensuring that defense witnesses are able to access the courthouse at the appropriate time for testimony;
 - Trial duties *do not* include delivering opening statements or summation, conducting direct examination or cross-examination of witnesses, arguing or making objections, briefing or researching objections when written briefing or case law is requested by the court,
 - In the event the defendant chooses to testify, then the Court should decide whether I am to question the defendant or whether he is to testify in narrative form.
- Post-trial (if convicted)
 - Electronically filing Mr. Arrington's hand-written motions and sentencing materials in CM/ECF so they are served on the court and counsel in the appropriate way, but not to type, proofread, spell-check, cite check, or format his motions and exhibits;
 - Attending post-trial motion proceedings and oral argument and sentencing;
 - Attending the Presentence Report interview;
 - Meeting with Mr. Arrington to discuss what his sentencing arguments and evidence will be, but not to provide legal advice or counsel regarding the strength or weakness of those arguments and evidence;
 - Providing procedural advice regarding the manner in which to present evidence to assist Mr. Arrington with his attempts to conform with the Federal Rules of Evidence, the Federal Rules of Criminal Procedure, and the Local Rules of the WDNY;
 - Electronically organize sentencing exhibits to aid with presentation;
 - Post-trial duties *do not* include performing legal research at the direction of the defendant, preparing Rule 29/33 motions, preparing sentencing letters from family/friends, and drafting motions and/or responses to government motions on behalf of the defendant.
- Appeal
 - Filing Mr. Arrington's notice of appeal on CM/ECF;
 - Standby counsel is required to do nothing more unless specifically appointed to represent Mr. Arrington by the Second Circuit Court of Appeals.

Exhibit #1

SINGER LEGAL PLLC

September 28, 2021
Page 5

This list is not exhaustive and it is impossible to think of everything that may come up. In the event I have a question regarding whether I should perform a duty, then I will endeavor to ask the Court for permission/guidance before proceeding. I will advise Mr. Arrington to do the same. However, I believe that making these duties clear at the beginning will ensure that Mr. Arrington's rights are respected and the trial may proceed in the most orderly fashion possible.

I am happy to conference with the Court and counsel prior to going on the record regarding this letter. Thank you.

Very truly yours,



Robert C. Singer

Encls

Exhibit #2

New York State Commission of Correction
Inmate Grievance Form
Form SCOC 7032-1 (11/2015)Sgt. Higgins
Date/Time: 1/5/22 10:20Facility: Cattaraugus County Jail Housing Location: C-Pod cell 2
Name of Inmate: Roderick Arrington Grievance #: 22-001Brief Description of the Grievance (Submitted by the grievant within 5 days of occurrence)
Number of Sheets Attached (3) 13

ON 1/4/2022 I was notified by Captain Eric Keller that somebody acting as co-counsel was here at the Jail in a unsecure location going through all my legal materials and all my personal property without a warrant, without me presence, and without my consent. I have asked Captain Keller

Action requested by the grievant (Submitted by the grievant within 5 days of occurrence):
Number of Additional Sheets Attached ()

I am requesting the Log in sheet on 01/04/2022, that identify this person that handled my personal property and all my legal material and I am demanding the return of all missing legal documents which is two letters and one Manilla envelope, and retain all camera footage on 12/22/2021 and 01/04/2022.

Grievant Signature: Roderick ArringtonDate/Time Submitted: 01/05/2022 at 5:23pmReceiving Staff Signature: Tidd 4331Date/Time Received: 1/5/22 1728

Investigation Completed by: _____

Date Completed: _____

Decision of the Grievance Coordinator

Number of Sheets Attached ()

Written decision shall be issued within 5 business days of receipt of grievance and shall include specific facts and reasons underlying the determination

- ☐ Non-grievable issue as per 9 NYCRR §7032.4(h) (may not be appealed to CAO)
- ☐ Grievance Accepted
- ☐ Grievance Denied on Merits
- ☐ Grievance Denied due to submitted beyond 5 days of act or occurrence (can be appealed to CAO)
- ☐ Grievance Accepted in part/ Denied in part (Note specific Acceptance/Denial parts below)

Signature of the Grievance Coordinator: _____

Date: _____

①

Exhibit #
2

To stop this person from going through my legal materials and personal property without my presence and without any warrant. I asked Captain Keller to put this person and myself in a secure location so I can be present while whoever this person is going through my things without me there. I stated to Captain Keller, that I am my own Attorney, and I am proceeding in my case pro se, and I am in charge of my own case, so whoever this person is demanding this person to stop, because I talked to Standby Counsel Mr. Singer on 1/3/2022 and told Mr. Singer to inform me when he is coming to this Jail so we can go through my legal materials and personal property together because the U.S. Attorney's on my case sent FBI agents up to this jail without a warrant and searched and seized all my personal property and all my legal materials, including my whole Trial defense and other sensitive legal documents that proves my innocence and proves all this misconduct by the AUSAs in this case, along with misconduct from Trial Attorney and Standby Counsel Mr. Spitler, and I told Mr. Singer on the phone not to come up here to the jail acting as my Counsel, and do not go through my things without my consent or without me being present. I had explained all this to Captain Keller and requested that whoever this person is claiming to be co-counsel to "stop", if I can not be present Captain Keller told me "No". I am requesting the

(2)

Exhibit #2

The log in sheet to identify this person that went through my legal materials and personal property without my consent or my presence there. I was never shown any Warrant from 12/22/2021, and I ^{was} tricked out my cell, to a phone call by standby counsel down stairs on the first floor to receive a call. I never had a Attorney call on the first floor in the two years, I been housed in this Jail. I am requesting video footage/camera's to be retained from 12/22/2021 and 1/4/2022. I have some sensitive legal materials and personal letters that's apart of my trial defense that's missing, this materials been seized and this is a violation of my Constitutional rights. The protective order been in place since 11/18/2021, when I first came back from the U.S. District Court, officer Blue, was the acting Sgt when I got back to the jail and I had informed officer Blue that the Court made a decision and I had to surrender certain material. He said wait until captain Keller come back, so I waited until I seen Keller, on 2 different occasion's I have tried to hand over this material, which captain Keller refused. The protective order only authorize that I "surrender" this materials, "Mr. Arrington" "Not removal" or "searched or seized". I was allowed for the first time in 14 days, this two weeks was the first time I was allowed to check my personal things, my personal property, and all my legal materials, My trial defense been prejudice and somebody stolen all My documents

③

Exhibit #2

that was for my trial defense to prove my innocent's and to prove this Misconduct and the personal sensitive letters to impeach the witnesses in this case. I am demanding the return of these sensitive legal documents and an accurate and detailed explanation ^{on why I was not presence.} and the chain of custody report. Captain Eric Keller stated on 12/22/2021, that these FBI Agents had a search Warrant, Everybody had this whole thing planned and this was the reason Standby counsel asked that i be locked in the bullpens to receive this call on the first floor. While I was out my cell, Captain Keller and these FBI agents, which is agent Jared Fitzgerald and agent Rob Colunga, they searched and seized all my property without me being presence. I was denied the right and I never received a copy of this Warrant. The protective order signed by the Hon. Richard J. Arcara U.S. District Court Judge Never authorized any FBI agents to search and seize, or remove any personal property, or the removal and searching and seizing of Mr. Arrington's personal property or his whole legal defense materials. The protective order did not state this Misconduct. I am, my own attorney, and I have full control over my case. So who ever this unknown co-counsel is was out of line, because Standby Counsel Robert C. Singer, Esq. have a contract, and if that was him on 1/04/2022, going through my personal property without my consent, He breached his contract by denying me the right to Act when i demanded to be presence, after i told captain Keller to stop this person from going through my property without me being presence. Captain denied me this right when i beg him to let me be presence. I have Attached Robert C. Singer, Esq, contract AS an exhibit, also A copy of the protective order AS an exhibit so you can see what the Judge authorized Me to surrender.

I am requesting a copy of this warrant captain Eric Keller told that the FBI agents had and a copy of the log in sheet to identify who this person was that searched and separated and seized

Exhibit #7

My personal property and all my sensitive legal documents for my trial defense strategy. I am requesting video footage/The C-pod camera footage on 12/22/2021, to be retained until my personal property/legal materials be returned back to me in a timely fashion. Also I am requesting the video footage where this co-counsel was at in this unsecure location while my property was being handled, camera footage on 1/4/2022. To be retained. I also need an accurate and detailed explanation on why I was denied the right to be presence during these searches and seizure of all my personal property and all my legal materials... I have not heard anything from standby counsel Mr. Singer stating that he been up to this jail or he was coming up here because when i spoke to standby on 1/3/2022, he told me that he was in quarantine because he tested positive for covid-19, and I also stated to standby counsel, do not go through my property without me presence so I need the Log in sheet to confirm who handle my property on 1/4/2022, and denied me the right to be presence as my own Attorney/pro se... This all came to a head when i filed my response motion (DKT 675, 675-1) on 12/21/2021 exposing ~~the~~ misconduct committed by the U.S. Attorney's on this case, on 12/22/2021 FBI Agents came to this jail with A Fake Warrant and searched and seized all my personal property and my whole legal defense for trial and Now the documents and materials and the letters i had that proves my innocents is missing. I am requesting that this matter get a thorough investigation and return all missing legal documents and them two letters from Aaron Hicks.



COPY

Exhibit #7

New York State Commission of Correction
Inmate Grievance Form
Form SCOC 7032.1 (11/2015)

Sgt. Red
Date/Time: 12/29/21 1900

Facility: Cattaraugus County

Housing Location: C - pod

Name of Inmate: Roderick Arrington

Grievance #: 21 - 128

Brief Description of the Grievance (Submitted by the grievant within 5 days of occurrence)
Number of Sheets Attached (5)

Cattaraugus County Jail Captain Keller and unidentified FBI agents, on 12/23/2021, violated my constitutional rights when all three above, tricked me out of my cell, to be brought down to the Bullpens on the first floor for an attorney call with standby counsel. While I was out my cell, Captain Keller and the FBI agents searched and seized all my legal documents from me without presenting a warrant.

Action requested by the grievant (Submitted by the grievant within 5 days of occurrence):
Number of Additional Sheets Attached (3)

I am demanding the return of these sensitive legal documents immediately along with a chain of custody report on the seized documents and an accurate and detailed explanation, including the identities of all involved individuals from this involvement and a copy of the warrant.

Grievant Signature: R. A. Arrington

Date/Time Submitted: 12/29/2021

Receiving Staff Signature: [Signature]

Date/Time Received: 12/29/21 # Rec'd 12/29

Investigation Completed by: Higgins

Date Completed: 1/3/22 427A

Decision of the Grievance Coordinator

Written decision shall be issued within 5 business days of receipt of grievance and shall include specific facts and reasons underlying the determination

Number of Sheets Attached (1)

- ☐ Non-grievable issue as per 9 NYCRR §7032.4(h) (may not be appealed to CAO)
☐ Grievance Accepted
☐ Grievance Denied on Merits
☐ Grievance Denied due to submitted beyond 5 days of act or occurrence (can be appealed to CAO)
☒ Grievance Accepted in part/ Denied in part (Note specific Acceptance/Denial parts below)

* See Attached

Signature of the Grievance Coordinator: [Signature]

Date: 1/3/22

Exhibit #7

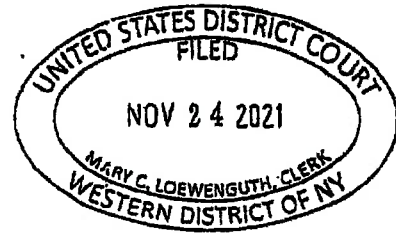
I am a pro SE Attorney, and I am a pretrial detainee preparing for trial. This violation is very prejudicial to my legal defense. They did not limit or adhere to the scope on this so called warrant and seized everything. I have tried to be patient throughout this violation that have been committed against me in this Jail. I was told I was going to be giving all materials back the next day, and its been over 7 days including the weekend. I have been hindered to move forward in my case, with all my legal materials being seized without any warrant. The protective order only states grand Jury Transcripts / 3500 materials and the trial Transcript. I was ordered to hand over these materials, in which I have tried on numerous occasions. I have tried to hand over these material. Which captain Keller refused to take them. I have sent a copy of the protective order as an exhibit Attached.

Thank You

(1)

Case 1:15-cr-00033-RJA-HKS Document 666 Filed 11/24/21 Page 1 of 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

v.

15-CR-33-A

RODERICK ARRINGTON,

Defendant.

Exhibit #7

PROTECTIVE ORDER

The Court hereby enters a Protective Order with respect to 3500 material, Giglio/impeachment information, pre-trial submissions, and prior trial transcripts and documents, and the manner in which they will be provided to the defendant, pro se, in preparation for his trial.

NOW, upon consideration thereof, it is hereby

ORDERED, that the government shall be permitted to file its pre-trial memorandum, witness list, and exhibit list under seal such that only the parties and the Court will have access to the government's pre-trial memorandum, witness list, and exhibit list; and it is further

ORDERED, that the government shall provide 3500 material, Giglio/impeachment information, the government's pre-trial memorandum, witness list, and exhibit list, electronically or in hard copy, to staff at the Cattaraugus County Jail for the defendant's use. In addition, standby counsel may provide prior trial transcripts and documents in his

Case 1:15-cr-00033-RJA-HKS Document 666 Filed 11/24/21 Page 2 of 4

Exhibit #. 7

possession to staff at the Jail for the defendant's use. The defendant shall immediately surrender any such materials currently in the defendant's possession to Jail staff upon entry of this order. No one shall make copies, or allow copies of any kind to be made by any person, of any of those materials. No one in the Jail shall read the materials except the defendant and the defendant's standby counsel; and it is further

ORDERED, that the defendant may access those materials only outside the presence of other inmates, either via a computer with no internet connection or printer, or in hard copy. The defendant shall be permitted to take notes and those notes shall be collected at the end of each review session. The defendant shall either be supervised by Jail staff at all times while reviewing those materials, or if left alone for review, he shall be searched prior to returning to his cell or the presence of other inmates; and it is further

ORDERED, that the defendant shall use the 3500 material, Giglio/impeachment information, the government's pre-trial memorandum, witness list, exhibit list, and the prior trial transcripts and documents solely for the purposes of trial preparation (including motions in limine) and trial. The defendant shall not communicate about the contents of those materials with anyone other than his standby counsel; and it is further

ORDERED, that counsel for the government shall endeavor to provide unredacted 3500 material and Giglio/impeachment information for the defendant's use as far in advance of trial as possible. In the event the government determines that the safety and security of a particular witness requires withholding disclosure of that particular witness's 3500 material

Case 1:15-cr-00033-RJA-HKS Document 666 Filed 11/24/21 Page 3 of 4

Exhibit #7

and Giglio/impeachment information, the defendant is permitted to file a motion with the Court for the Court's consideration as to whether or not to compel disclosure of the particular witness's 3500 material and Giglio/impeachment information; and it is further

ORDERED, that the defendant shall return all 3500 material, Giglio/impeachment information, the government's pre-trial memorandum, the government's witness list, the government's protected witness list, the government's exhibit list, and/or the government's protected exhibit list to the government at the close of trial, except for those documents which are received in evidence; and it is further

ORDERED, that before the defendant shall be provided with a copy of this Protective Order prior to delivery of the materials described above; and it is further

ORDERED, that the defendant shall notify the government prior to trial of any materials described above that he may seek to introduce at trial so that the government may seek an additional order sealing the documents and information contained therein from public disclosure as necessary. Where appropriate, however, the defendant's standby counsel must redact any personal identifying information in the materials described above, in accordance with Federal Rule of Criminal Procedure 49.1; and it is further

ORDERED, that if the defendant exercises his right to be represented by counsel, rather than representing himself for trial, Jail staff shall immediately return the materials

Case 1:15-cr-00033-RJA-HKS Document 666 Filed 11/24/21 Page 4 of 4

Exhibit #7

described above to the government or to standby counsel and the terms of this Court's prior Protective Order, (Dkt. 132), shall go into effect; and it is further

ORDERED, that violation of this Protective Order may be deemed contempt of court pursuant to 18 U.S.C. § 401; and it is further

ORDERED, that this order shall only apply to defendant Roderick Arrington, and shall not modify or supersede the terms of any protective order entered with respect to discovery materials provided by the government.

DATED:

Buffalo, New York

November 24, 2021.


HONORABLE RICHARD J. ARCARA
United States District Court

Grievance # 21-128

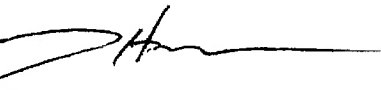
Decision of Grievance Coordinator

I have investigated your grievance. On 12/22/21 you were notified by your side counsel that certain legal materials were going to be seized by the FBI and removed from your possession within the jail. Due to the large amount of legal materials the FBI seized all of your paperwork and placed it in a jail administrator's office, out of the reach of inmates and other jail staff. Your co-counsel stated he would be in the following day to go through your legal documents, separate the items prohibited by the court to be in your housing area and return all other documents. Your co-counsel has failed to appear as of this date.

I accept your request for the identity of people involved with your legal documents. FBI agents Jared Fitzgerald and Rob Colunga searched your cell and collected all written materials. A box with those collected documents were turned over to Captain Keller, the Jail Administrator, and secured in his office. Your side counsel was also involved as he called to inform you as to what was going on.

The orders authorizing the removal of legal materials from your possession were stated in a protective order signed by the Honorable Richard J. Arcara, US District Court Judge. You were given a copy of this.

Your request for the immediate return of legal documents is denied. All legal documents that you are allowed to have in your custody, will be returned to you as soon as your co-counsel is able to go through your documents and take out all prohibited materials.



Sgt. Higgins
Grievance Coordinator

COPY

New York State Commission of Correction
Inmate Grievance Form Part II

21-128

NOTE: IF GRIEVANT HAS BEEN TRANSFERRED OR RELEASED FROM THE FACILITY, FORWARD TO C.A.O. FOR DETERMINATION

Grievant's Appeal to the Chief Administrative Officer

Must submit within two business days of receipt of the Grievance Coordinator's written decision

I have read the above decision of the Grievance Coordinator and

() I agree to accept the decision

(✓) I am appealing to the Chief Administrative Officer

Grievant Signature: _____

Date: 1/03/2022

Decision of the Chief Administrative Officer:

Number of Sheets Attached ()

Shall be issued within five business days after receipt of appeal and provided to grievant

- ☐ Non-grievable issue as per 9 NYCRR §7032.4(h) (may not be appealed to CPCRC)
- ☐ Grievance Accepted (attach written directive of provided remedy/relief pursuant to 9 NYCRR §7032.4(l))
- ☐ Grievance Denied on Merits
- ☐ Grievance Denied due to submitted beyond 5 days of act or occurrence (may be appealed to CPCRC)
- ☐ Grievance Denied due to appeal submitted beyond 2 business days (may be appealed to CPCRC)
- ☐ Grievance Accepted in part/Denied in part (attach written directive of provided remedy/relief pursuant to 9 NYCRR §7032.4(l) for the Accepted portion of grievance)

Signature of the Chief Administrative Officer: _____

Date: _____

Pursuant to 9 NYCRR §7032.5(a), any grievant may appeal any grievance DENIED by the facility administrator, in whole or in part, to the State Commission of Correction.

I have read the above decision of the Chief Administrative Officer and

() I agree to accept the decision

() I am appealing to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council

NOTE: IF GRIEVANT HAS BEEN TRANSFERRED OR RELEASED FROM THE FACILITY, FORWARD TO CPCRC UNLESS C.A.O. HAS ACCEPTED THE GRIEVANCE IN ITS ENTIRETY

NOTE: A GRIEVANCE ACCEPTED IN ITS ENTIRETY BY THE CHIEF ADMINISTRATIVE OFFICER OR FOUND NON-GRIEVABLE BY THE CHIEF ADMINISTRATIVE OFFICER MAY NOT BE APPEALED, AND SHALL NOT BE FORWARDED, TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL.

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE THE INVESTIGATION REPORT, THE WRITTEN DIRECTIVE OF PROVIDED REMEDY/RELIEF FOR GRIEVANCES SUSTAINED IN PART (IF APPLICABLE) AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____

State Commission of Correction Grievance Report

Grievance Information

Grievance Id # : 155700
ORI : NY004013C
Agency Name : Cattaraugus County Jail
Facility Type : County Jail
Reported Date : 01/06/2022
Created Date : 01/06/2022
Created By : higginsti1

Grievant

Name : Arrington , Roderick
Sex : Male

Comments

higginsti1 : 01/06/2022 09:28 AM : Grievance #21-128

**COPY**New York State Commission of Correction
Inmate Grievance Form Part II

21-128

NOTE: IF GRIEVANT HAS BEEN TRANSFERRED OR RELEASED FROM THE FACILITY, FORWARD TO C.A.O. FOR DETERMINATION**Grievant's Appeal to the Chief Administrative Officer****Must submit within two business days of receipt of the Grievance Coordinator's written decision**

I have read the above decision of the Grievance Coordinator and

() I agree to accept the decision

(✓) I am appealing to the Chief Administrative Officer

Grievant Signature: *Kedrick A. Wright*Date: 1/03/2022**Decision of the Chief Administrative Officer:**

Number of Sheets Attached ()

Shall be issued within five business days after receipt of appeal and provided to grievant

- ☐ Non-grievable issue as per 9 NYCRR §7032.4(h) (may not be appealed to CPCRC)
- ☐ Grievance Accepted (attach written directive of provided remedy/relief pursuant to 9 NYCRR §7032.4(l))
- ☐ Grievance Denied on Merits
- ☐ Grievance Denied due to submitted beyond 5 days of act or occurrence (may be appealed to CPCRC)
- ☐ Grievance Denied due to appeal submitted beyond 2 business days (may be appealed to CPCRC)
- ☒ Grievance Accepted in part/Denied in part (attach written directive of provided remedy/relief pursuant to 9 NYCRR §7032.4(l) for the Accepted portion of grievance)

The names of the FBI agents that were here were given to me.

I am not required to maintain a chain of custody. You were given the materials that you were permitted to have. All other materials were seized through a court order "Protective Order". If I were to violate this order, I could be held for contempt of court. I am therefore denying the grievance in part.

Signature of the Chief Administrative Officer: *[Signature]*Date: 1/5/2022

Pursuant to 9 NYCRR §7032.5(a), any grievant may appeal any grievance DENIED by the facility administrator, in whole or in part, to the State Commission of Correction.

I have read the above decision of the Chief Administrative Officer and

() I agree to accept the decision

() I am appealing to the Citizen's Policy and Complaint Review Council

Grievant Signature: _____

Date: _____

Submission to the Citizen's Policy and Complaint Review Council**NOTE: IF GRIEVANT HAS BEEN TRANSFERRED OR RELEASED FROM THE FACILITY, FORWARD TO CPCRC UNLESS C.A.O. HAS ACCEPTED THE GRIEVANCE IN ITS ENTIRETY****NOTE: A GRIEVANCE ACCEPTED IN ITS ENTIRETY BY THE CHIEF ADMINISTRATIVE OFFICER OR FOUND NON-GRIEVABLE BY THE CHIEF ADMINISTRATIVE OFFICER MAY NOT BE APPEALED, AND SHALL NOT BE FORWARDED, TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL.**

I HAVE ISSUED THE GRIEVANT A RECEIPT INDICATING THE DATE THE APPEAL HAS BEEN SUBMITTED TO THE CITIZEN'S POLICY AND COMPLAINT REVIEW COUNCIL. I HAVE ENCLOSED WITH THIS GRIEVANCE THE INVESTIGATION REPORT, THE WRITTEN DIRECTIVE OF PROVIDED REMEDY/RELIEF FOR GRIEVANCES SUSTAINED IN PART (IF APPLICABLE) AND ALL OTHER PERTINENT DOCUMENTS.

Signature of the Grievance Coordinator: _____

Date: _____



Commission of Correction

ALLEN RILEY
Chairman

THOMAS J. LOUGHREN
Commissioner

YOLANDA CANTY
Commissioner

February 10, 2022

Sheriff Timothy Whitcomb
Cattaraugus County Sheriff's Office
301 Court Street
Little Valley, New York 14755

Re: Grievance # 155700 - Facility # 21-128 Grievant Roderick Arrington

Dear Sheriff Whitcomb:

On this date, the Citizen's Policy and Complaint Review Council reviewed the above-referenced grievance and voted to deny the grievance. The Council sustains the action taken by the facility administration.

Sincerely,

A handwritten signature in black ink, appearing to be "Y.Canty", written over a horizontal line.

Yolanda Canty
Commissioner

cc: Jail Administrator
Grievance Coordinator
Roderick Arrington